

ANALYSIS OF ORIGINAL BILL

Author: Leslie and Haynes Analyst: Paul Brainin Bill Number: SB 1383
Related Bills: SB 134 (97) Telephone: 845-3380 Introduced Date: 01-06-98

Attorney: Doug Bramhall Sponsor:

SUBJECT: FTB Tax Return Information/Unauthorized Disclosure Or Inspection Is A
Felony Or Misdemeanor

SUMMARY

This bill would amend the Administration of Franchise and Income Tax Law (AFITL) section regarding unwarranted disclosure or use of tax information to include unauthorized willful inspection and to make any of these acts punishable as either a misdemeanor or a felony.

This analysis will not address the changes to the Revenue and Taxation Code (R&TC) administered by the State Board of Equalization.

EFFECTIVE DATE

This bill would become effective January 1, 1999, and apply to any action after that date.

SPECIFIC FINDINGS

Existing federal law states employees are subject to felony and misdemeanor charges for unauthorized willful disclosure and unauthorized willful inspection of tax information, respectively. The latter action was recently added to federal law by the Taxpayer Browsing Protection Act, enacted as Public Law 105-35, on August 5, 1997. Additionally, state employees are subject to federal law regarding unauthorized disclosure of federal tax information received by the Franchise Tax Board (FTB) from the Internal Revenue Service (IRS). If any person is criminally charged for these acts, the Secretary must notify the taxpayer whose records were inspected or disclosed.

Existing federal law also provides for taxpayers to bring civil action in court for unauthorized disclosure or inspection of tax information that occurs either knowingly or by reason of negligence.

Existing state law permits certain disclosure of tax returns or tax return information solely for tax administration purposes. Examples are disclosure of

DEPARTMENTS THAT MAY BE AFFECTED:

☐ STATE MANDATE

☐ GOVERNOR'S APPOINTMENT

Board Position:

☐ S ☐ O
☐ SA ☐ OUA
☐ N ☐ NP
☐ NA ☐ NAR
☒ PENDING

Agency Secretary Position:

☐ S ☐ O
☐ SA ☐ OUA
☐ N ☐ NP
☐ NA ☐ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved ☐
Position Disapproved ☐
Position Noted ☐

Department Director

Gerald H. Goldberg

3/9/98

Agency Secretary

Date

By:

Date:

tax information to private collection agencies contracted to collect tax debts for the department and disclosure of information in judicial or administrative proceedings pertaining to tax administration.

Existing state law, under the **R&TC**, makes it a misdemeanor for any current or former officer or employee of the FTB to disclose or use confidential tax information.

Existing state law, under the **Government Code**, makes it a felony for any officer of the state having custody of various records or documents to willfully (or permit any other person to) steal, remove, secrete, destroy, mutilate, deface, alter, or falsify the whole or part of any such document. Additionally, **existing state law** makes it a misdemeanor for any person (not an officer) doing the same acts.

The department is awaiting guidelines from the IRS regarding the new requirements to ensure the prevention and detection of unauthorized disclosure or inspection of federal tax information.

Currently, the department's policy and practice regarding any unauthorized disclosure of confidential tax information requires notification of the Disclosure Office immediately upon discovery. Within 24 hours, a written report must be sent to the Disclosure Office. The department will notify taxpayers of unauthorized disclosures if it is determined that the taxpayer could be adversely affected by the disclosure (i.e., trade secrets, work processes, etc.). The department identified 115 unauthorized disclosures for the past three fiscal years (94/95-96/97), and six cases required taxpayer notification; there were no criminal charges filed in any of those cases.

This bill would make "unauthorized willful inspection" of tax information furnished or secured by law, in addition to unwarranted disclosure or use of the information, a felony or a misdemeanor. Inspection is defined as any examination of a return or return information. By making the act a felony or a misdemeanor, the act can be prosecuted as either.

This bill also would require that the FTB notify a taxpayer of any unauthorized inspection, disclosure, or use of his or her confidential tax records.

Policy Considerations

This bill would conform state law to the federal law concerning the unauthorized willful inspection of confidential tax records and require the notification of taxpayers of unauthorized willful inspection, unwarranted disclosure or use of that information. However, federal law only requires taxpayer notification if a person is criminally charged with inspection or disclosure of a tax return or return information. This bill would cause the department to notify taxpayers of any unauthorized willful inspection or unwarranted disclosure or use of confidential tax records, regardless of whether criminal charges are filed.

Implementation Considerations

This bill would require additional education of the department's staff regarding unauthorized willful inspection of confidential tax records. However, this education already has begun as a result of the new federal law. This education would be extended to other agencies or vendors that have been granted legal access to confidential tax data.

Technical Considerations

The section of law this bill would amend pertains to confidential tax information that may be provided to other entities based on reciprocal agreements. However, Section 19542 of the R&TC should also be amended because that section also pertains to disclosure of information.

The attached Amendment #1 would clarify that the provision covers only unauthorized use of tax information.

This bill could be read to require that the FTB notify only personal income taxpayers by referring to any unauthorized willful inspection or unwarranted disclosure or use of his or her personal, confidential tax records. The attached amendments would clarify that business entities also should receive notification. See attached Amendment #2.

FISCAL IMPACT

Departmental Costs

No significant departmental costs associated with this bill have been identified.

Tax Revenue Estimate

This bill would not have any impact on state income tax revenue.

BOARD POSITION

Pending.

Analyst Paul Brainin
Telephone # 845-3380
Attorney Doug Bramhall

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1383
As Introduced January 6, 1998

AMENDMENT 1

On page 2, line 28, after "disclosure or" insert:

unauthorized

AMENDMENT 2

On page 3, amend line 6 as follows:

disclosure or unauthorized use of ~~his or her~~ his, her, or its personal,
confidential tax